

Open Space Easements



Since its incorporation in January 1956, the Town of Los Altos Hills has recognized the value and beauty of its open space lands and has endeavored to retain the rural character of the Town. Protection and long-term preservation of open space areas enhances the quality of life for residents and the economic value of properties and neighborhoods.^{1,2}

A large percentage of properties in Los Altos Hills include dedicated open space easements. If your property includes such an easement, you should be aware that certain restrictions may apply that are intended to conserve the natural terrain, vegetation and other natural resources on this part of your land.

This document is intended to help landowners understand how to manage an open space easement to comply with Town ordinances.

1. Standiford RB and Scott T. "Value of oak woodlands and open space on private property values in Southern California." USDA Forest Service Gen Tech. Rep. PSW-GTR-184, 2002.

2. Mukherjee M and Fernandez L. "Analysis of the influence of open space on residential values." Association of Environmental and Resource Economists Inaugural Summer Conference, 9–10 June 2011. Seattle, WA.

Basics of Open Space Easements

Put simply, an open space easement is a legal agreement that restricts the development on a specified portion of land. Its goal is to protect specific conditions deemed unique or important for the welfare of the Town and its natural environment. An open space easement ensures that it remains undeveloped and in its natural condition.

The aspects of the land that the Town seeks to preserve can include its terrain, vegetation, watershed, habitats for indigenous wildlife, wildlife corridors, etc. An open space easement can also be used to reduce the potential for erosion, protect offsite drainage, solve water quality issues, and protect from geologic hazards. Typically easements are used in areas with steep slopes, canyons and ravines, heritage oaks, or other environmentally sensitive areas, such as along creeks and riparian corridors.

An open space easement is a permanent, legally binding agreement between the landowner and the Town. It is recorded with the county and is attached to the records of your parcel. All subsequent owners must also comply with the terms of this agreement.

How Open Space Easements Are Supported by Local, State, and Federal Law

Local: The General Plan of the Town of Los Altos Hills supports the Town taking an active role in protecting land with open space easements. Three Elements of the General Plan—Land Use, Conservation, and Open Space and Recreation—direct the Town “to require the dedication of open space easements where appropriate, as a condition of approval for new developments” (LAH General Plan: Land Use Element, page LU-9). All other towns in the area have similar requirements.

Protect and maintain those areas necessary to the integrity of natural resources and processes, with special emphasis on, but not limited to, the groundwater recharge and drainage system, open spaces vital for wildlife habitat, open spaces suitable for agriculture, and other areas of major or unique ecological significance.

—LAH General Plan: Open Space and Recreation Element; Goal 1: Policy 1.2; page 9

Open space easements (OSE) may be required [by the Town] as a condition of approval for site development. When an OSE is required, the property owner signs an agreement with the Town to keep the easement undeveloped and in its natural condition.

—LAH General Plan 2008: Land Use Element, page LU-10

It is in the public interest that the land be retained as open space because such land either will add to the amenities of living in neighboring urbanized areas or will help preserve the rural character of the area in which the land is located.

—California Govt. Code Section 51084

State: In the Open Space Easement Act of 1974 (Govt. Code Section 51070-51097), the State of California expressly endorsed open space easements as a tool for towns to practice responsible planning and to promote environmental protection. This legislation allows cities to impose restrictions “necessary or desirable to maintain the natural

or scenic character of the land and to prevent any activity, use, or action which could impair the open-space character of the land.”

Federal: The United States, U.S.C. Title 16, Conservation, provides for the conservation “of the scenery and the natural and historic objects and wildlife therein.”

When Are Open Space Easements Required?

An open space easement may be required over certain portions of public and private lands during the request for a site development permit for a major addition, a new residence, or for a proposed subdivision.

What Restrictions Do Open Space Easements Impose on Development?

The specified areas must be left undisturbed and in their natural state. Unless specified in the easement, a landowner cannot build structures or make improvements in an open space easement that are incompatible with maintaining and preserving the natural or scenic character of the land.

... the landowner shall not construct or permit the construction of improvements, except those for which the right is expressly reserved in the instrument, provided that such reservation would not be inconsistent with the purposes of the Open Space Easement Act and which would not be incompatible with maintaining and preserving the natural or scenic character of the land.

— California Government Code Section 51075, Section (d)

Each parcel shall be evaluated on a case-by-case basis during the site development review process to determine whether an open space easement should be required, based on the extent of steep slopes generally in excess of 30% slope and the presence of heritage oak trees and/or creek corridors. Other considerations shall include the size of the proposed open space easement, its contiguity with existing open space easements, and whether the property is located within an Open Space Conservation Area.

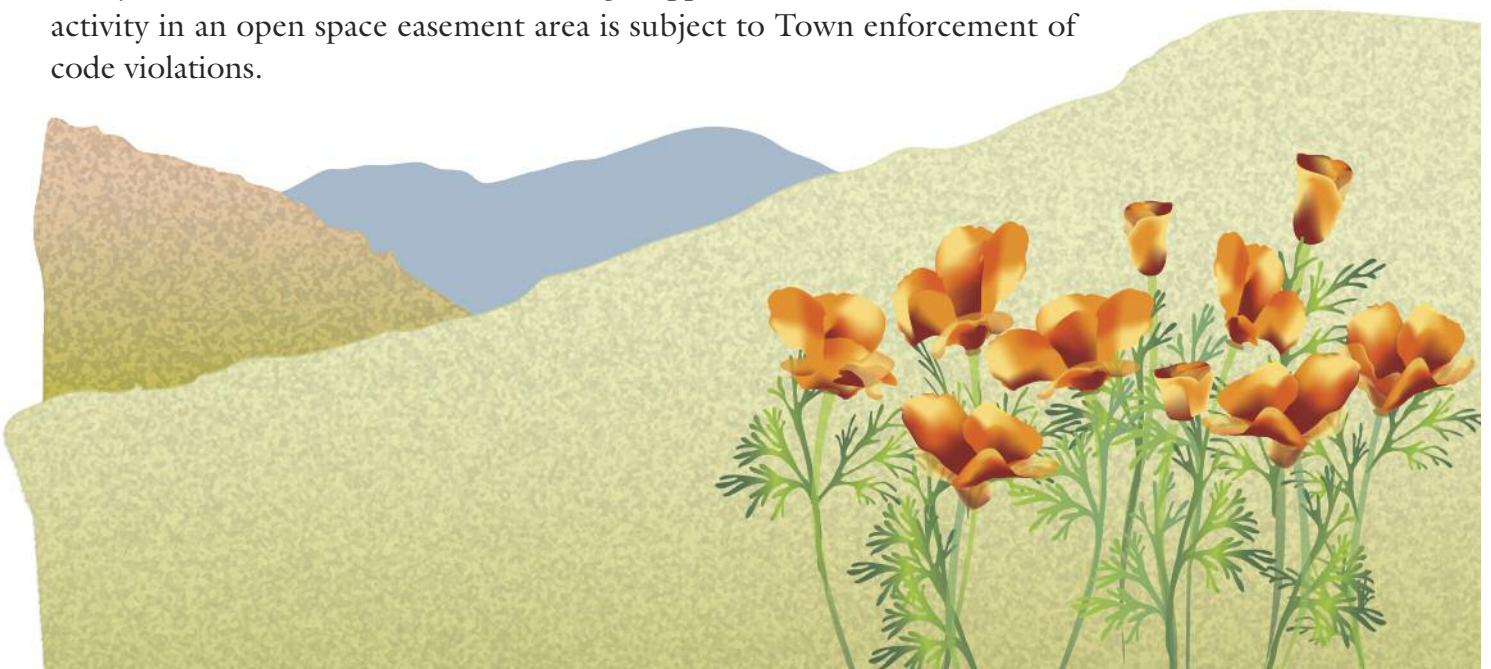
—LAH General Plan: Land Use Element; page LU-9

Protection of Vegetation: In general, the vegetation within an open space easement must be left in its natural state.

No removal of trees or vegetation, or any other disturbance of the natural features, are allowed within the easement area. The Town may authorize some exceptions, which might include: (1) public and private utilities and paths dedicated to the Town,

lawful fences, grading for drainage improvements and underground utilities, (2) disease control and control of non-native plants and poison oak, (3) fire protection, or (4) habitat restoration.

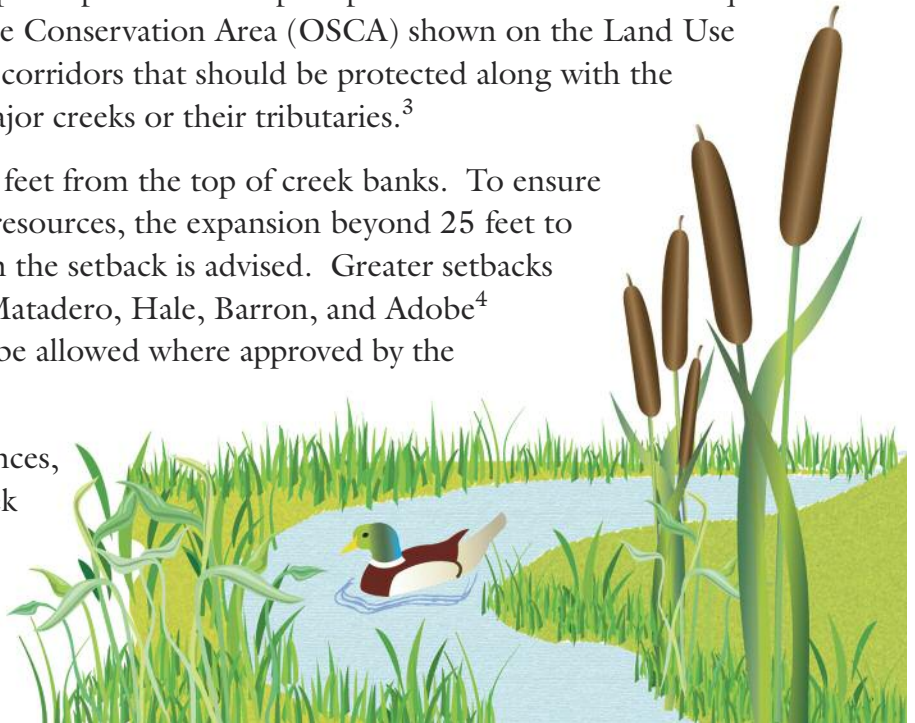
Always talk with a Town Planner first to get approval for these actions. Unauthorized activity in an open space easement area is subject to Town enforcement of code violations.



Protection of Creeks: Creeks and riparian areas provide unique ecological, aesthetic, and recreational values to the community and require special protection. Open space easements are often required along creek corridors. The Open Space Conservation Area (OSCA) shown on the Land Use Diagram designates many of the creek corridors that should be protected along with the canyons and ravines associated with major creeks or their tributaries.³

Structures must be set back at least 25 feet from the top of creek banks. To ensure adequate protection of these valuable resources, the expansion beyond 25 feet to the drip line of mature oak trees within the setback is advised. Greater setbacks may be required along major creeks (Matadero, Hale, Barron, and Adobe⁴ Creeks); however, lesser setbacks may be allowed where approved by the Planning Commission.⁵

No grading or structures, including fences, are permitted within this setback. Creek banks should be left in their natural state as much as possible. Native riparian vegetation is not allowed to be removed, and only native plants can be newly planted.⁶



Fences: Because open space easements often provide important habitat and movement routes for wildlife, any fencing in or around an open space easement must allow free access for wildlife.

Open space/conservation easement perimeter fences shall provide openings sufficient to accommodate the free passage of wildlife through the open space easement. A split-rail wood fence or equivalent design shall be required.

— LAH Zoning Ordinance Section 10-1.507f(9)

Pathways: An open space easement does not create any right of access, either to the Town or to the public. Do not confuse these with pathway easements, which are different, and which do create rights of access. Because these easements serve different functions, a property may have both types of easements attached to it, and the easement areas can even physically overlap. Only the pathway easement, which forms part of the official pathway system of the Town, is accessible to the public. Paths that are within open space easements need to be constructed and maintained to minimize the environmental impact on the area. (Los Altos Hills General Plan: Pathway Element, pg. 9)

3. *Land Use Element, Los Altos Hills General Plan, Page LU-5*

4. *Conservation Element, Los Altos Hills General Plan, Page 10*

5. *Los Altos Hills Municipal Code, Article 7. Building Siting, View Protection, Ridgeline Preservation, Creek Protection*

6. *Santa Clara Valley Resources Protection Collaborative Guidelines and Standards for Land Use Near Streams, p 3.3*



Appendix: Definitions

Open Space Easement (Non-Voluntary)

An open space easement is a type of easement (e.g., like a utility easement or pathway easement) that may be required by the Town as a condition of approval for development. It is a legal agreement by the landowner to leave this part of the property undeveloped and in its natural condition. These (non-voluntary) open space easements are sometimes referred to as “conservation easements” in older Town documents. However, in today’s parlance a conservation easement refers only to voluntary conservation easements described below that can confer tax and estate benefits.

Conservation Easement (Voluntary)

A voluntary conservation easement is a legal agreement between a landowner and a qualified conservation organization or a public agency (e.g. Town of Los Altos Hills) that protects land in its natural, scenic, historical, agricultural, forested, or open space condition in perpetuity. It is a voluntary contract that permanently limits the extent and location of future structures and defines the type of land use that can occur, while allowing landowners to retain ownership and control of their property. Voluntary conservation easements can confer significant tax and estate tax benefits to a landowner. (A booklet on Voluntary Conservation Easements, which explains these financial benefits, is available from the Town’s Open Space Committee.)

Open Space Preserve

This designation is applied to undeveloped, natural areas that provide wildlife habitat, scenic views, and opportunities for nature study and low impact outdoor recreation, such as hiking and horseback riding. The primary purpose of this designation is the preservation and enhancement of the natural state of the land and its plants and animals. No buildings or other development are allowed. The Town-owned Open Space Preserves (e.g. Albert Byrne Preserve, Juan Prado Mesa Preserve, and O’Keefe Preserve) are open to the public and are protected in perpetuity by the Open Space Initiative passed in 2002. The Midpeninsula Regional Open Space District and City of Palo Alto own and manage more than 9,000 acres of open space preserves adjacent to Los Altos Hills.

Open Space Conservation Area (OSCA)

This is an overlay designation that is superimposed upon the residential land use areas on the Town’s Land Use Diagram in the General Plan. Land within the OSCA is considered environmentally sensitive and warrant special protection. OSCA areas generally include steep slopes, canyons and ravines associated with major creeks, or their tributaries, as well as creek corridors and other areas of heavy vegetation that should be protected. Within these areas, special measures should be taken to conserve the natural quality of the area and to avoid environmental degradation.

The Land Use Diagram of the Town of Los Altos Hills (Page 6) shows the locations of the Open Space Conservation Area and Town-owned Open Space Preserves.

